
A BILL FOR AN ACT

RELATING TO THE LAND USE COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 205-4, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§205-4 Amendments to district boundaries involving land**
4 **areas greater than fifteen acres.** (a) Any department or agency
5 of the State, any department or agency of the county in which
6 the land is situated, or any person with a property interest in
7 the land sought to be reclassified, may petition the land use
8 commission for a change in the boundary of a district. This
9 section applies to all petitions for changes in district
10 boundaries of lands within conservation districts, lands
11 designated or sought to be designated as important agricultural
12 lands, and lands greater than fifteen acres in the agricultural,
13 rural, and urban districts, except as provided in section 201H-
14 38. The land use commission shall adopt rules pursuant to
15 chapter 91 to implement section 201H-38.
16 (b) Upon proper filing of a petition pursuant to
17 subsection (a) the commission [~~shall~~], within not less than
18 sixty and not more than one hundred and eighty days, shall



1 conduct a hearing on the appropriate island in accordance with
2 the provisions of sections 91-9, 91-10, 91-11, 91-12, and 91-13,
3 as applicable.

4 (c) Any other provision of law to the contrary
5 notwithstanding, notice of the hearing together with a copy of
6 the petition shall be served on the county planning commission
7 and the county planning department of the county in which the
8 land is located and all persons with a property interest in the
9 land as recorded in the county's real property tax records. In
10 addition, notice of the hearing shall be mailed to all persons
11 who have made a timely written request for advance notice of
12 boundary amendment proceedings, and public notice shall be given
13 at least once in the county in which the land sought to be
14 redistricted is situated as well as once statewide at least
15 thirty days in advance of the hearing. The notice shall comply
16 with section 91-9, shall indicate the time and place that maps
17 showing the proposed district boundary may be inspected, and
18 further shall inform all interested persons of their rights
19 under subsection (e).

20 (d) Any other provisions of law to the contrary
21 notwithstanding, prior to hearing of a petition the commission



1 and its staff may view and inspect any land which is the subject
2 of the petition.

3 (e) Any other provisions of law to the contrary
4 notwithstanding, agencies and persons may intervene in the
5 proceedings in accordance with this subsection.

6 (1) The petitioner, the office of planning, and the county
7 planning department shall in every case appear as
8 parties and make recommendations relative to the
9 proposed boundary change.

10 (2) All departments and agencies of the State and of the
11 county in which the land is situated shall be admitted
12 as parties upon timely application for intervention.

13 (3) All persons who have some property interest in the
14 land, who lawfully reside on the land, or who
15 otherwise can demonstrate that they will be so
16 directly and immediately affected by the proposed
17 change that their interest in the proceeding is
18 clearly distinguishable from that of the general
19 public shall be admitted as parties upon timely
20 application for intervention.

21 (4) All other persons may apply to the commission for
22 leave to intervene as parties. Leave to intervene



1 shall be freely granted, provided that the commission
2 or its hearing officer if one is appointed may deny an
3 application to intervene when in the commission's or
4 hearing officer's sound discretion it appears that:

5 (A) the position of the applicant for intervention
6 concerning the proposed change is substantially the
7 same as the position of a party already admitted to
8 the proceeding; and (B) the admission of additional
9 parties will render the proceedings inefficient and
10 unmanageable. A person whose application to intervene
11 is denied may appeal such denial to the circuit court
12 pursuant to section 91-14.

13 (5) The commission shall pursuant to chapter 91 adopt
14 rules governing the intervention of agencies and
15 persons under this subsection. [~~Such~~] The adopted
16 rules shall without limitation establish: (A) the
17 information to be set forth in any application for
18 intervention; (B) time limits within which [~~such~~] the
19 applications shall be filed; and (C) reasonable filing
20 fees to accompany [~~such~~] the applications.

21 (f) Together with other witnesses that the commission may
22 desire to hear at the hearing, it shall allow a representative



1 of a citizen or a community group to testify who indicates a
2 desire to express the view of [~~such~~] the citizen or community
3 group concerning the proposed boundary change.

4 (g) Within a period of not more than three hundred sixty-
5 five days after the proper filing of a petition, unless
6 otherwise ordered by a court, or unless a time extension, which
7 shall not exceed ninety days, is established by a two-thirds
8 vote of the members of the commission, the commission, by filing
9 findings of fact and conclusions of law, shall act to approve
10 the petition, deny the petition, or to modify the petition by
11 imposing conditions necessary to uphold the intent and spirit of
12 this chapter or the policies and criteria established pursuant
13 to section 205-17 or to assure substantial compliance with
14 representations made by the petitioner in seeking a boundary
15 change[-]; provided that any conditions imposed shall be limited
16 to matters of statewide concern. The commission may provide by
17 condition that absent substantial commencement of use of the
18 land in accordance with [~~such~~] the petitioner's representations,
19 the commission shall issue and serve upon the party bound by the
20 condition an order to show cause why the property should not
21 revert to its former land use classification or be changed to a
22 more appropriate classification. [~~Such~~] The conditions, if any,



1 shall run with the land and be recorded in the bureau of
2 conveyances.

3 (h) No amendment of a land use district boundary shall be
4 approved unless the commission finds upon the clear
5 preponderance of the evidence that the proposed boundary is
6 reasonable, not violative of section 205-2 and part III of this
7 chapter, and consistent with the policies and criteria
8 established pursuant to sections 205-16 and 205-17. Six
9 affirmative votes of the commission shall be necessary for any
10 boundary amendment under this section.

11 (i) Parties to proceedings to amend land use district
12 boundaries may obtain judicial review thereof in the manner set
13 forth in section 91-14, provided that the court may also reverse
14 or modify a finding of the commission if ~~[such]~~ the finding
15 appears to be contrary to the clear preponderance of the
16 evidence.

17 (j) At the hearing, all parties may enter into appropriate
18 stipulations as to findings of fact, conclusions of law, and
19 conditions of reclassification concerning the proposed boundary
20 change. The commission may but shall not be required to approve
21 ~~[such]~~ the stipulations based on the evidence adduced.



1 (k) For purposes of this section, "matters of statewide
2 concern" shall:

3 (1) Include matters relating to:

4 (A) The conservation district and state waters;

5 (B) Lands designated or sought to be designated
6 as important agricultural lands;

7 (C) Requirements of the department of education;

8 (D) Regional state, not local or county, highway
9 improvements; and

10 (E) Historic preservation, including human burials,
11 addressed in chapter 6E;

12 provided that the commission shall further ensure that
13 each of the counties maintains and enforces its policy
14 for the provision of low, moderate, and workforce
15 housing; and

16 (2) Not include matters relating to:

17 (A) The development of sources, storage, and
18 transmission facilities and improvements for
19 provision of potable water;

20 (B) The collection, treatment, and disposal
21 facilities and improvements of wastewater;

22 (C) Erosion and drainage facilities and improvements;



- 1 (D) Parks and playgrounds;
- 2 (E) The provision of other infrastructure, including
- 3 electricity, cable television, and
- 4 telecommunications;
- 5 (F) The provision of public services, including but
- 6 not limited to police, fire, and solid waste
- 7 collection;
- 8 (G) County community, development, or community
- 9 development plans and zoning; and
- 10 (H) Other county responsibilities."

11 SECTION 2. Section 205-17, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§205-17 Land use commission decision-making criteria.** In
14 its review of any petition for reclassification of district
15 boundaries pursuant to this chapter, the commission shall
16 specifically consider the following:

- 17 (1) The extent to which the proposed reclassification
- 18 conforms to the applicable goals, objectives, and
- 19 policies of the Hawaii state plan and relates to the
- 20 applicable priority guidelines of the Hawaii state
- 21 plan and the adopted functional plans;



- 1 (2) The extent to which the proposed reclassification
2 conforms to the applicable district standards;
- 3 (3) The impact of the proposed reclassification on the
4 following areas of state concern:
- 5 (A) Preservation or maintenance of important natural
6 systems or habitats;
- 7 (B) Maintenance of valued cultural, historical, or
8 natural resources;
- 9 (C) Maintenance of other natural resources relevant
10 to Hawaii's economy, including agricultural
11 resources;
- 12 (D). Commitment of state funds and resources; and
- 13 (E) Provision for employment opportunities and
14 economic development; [and
- 15 ~~(F) Provision for housing opportunities for all~~
16 ~~income groups, particularly the low, low-~~
17 ~~moderate, and gap groups;]~~
- 18 provided that the commission shall further ensure that
19 each of the counties maintains and enforces its low,
20 moderate, and workforce housing policy;



1 (4) The standards and criteria for the reclassification or
 2 rezoning of important agricultural lands in section
 3 205-50; and

4 ~~[-(5) The county general plan and all community,~~
 5 ~~development, or community development plans adopted~~
 6 ~~pursuant to the county general plan, as they relate to~~
 7 ~~the land that is the subject of the reclassification~~
 8 ~~petition; and~~

9 ~~-(6)]~~ (5) The representations and commitments made by the
 10 petitioner in securing a boundary change."

11 SECTION 3. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14

INTRODUCED BY: Cindy Evans

JAN 25 2010



Report Title:

Land Use Commission

Description:

Limits conditions attached to land use commission decisions and orders to matters of statewide concern. Defines matters of statewide concern.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

